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REPORT AND RECOMMENDATION OF THE SUBCOMMITTEE ON COURTS TO THE JUDICIARY COMMITTEE

INVESTIGATION INTO THE CONDUCT OF SUPREME COURT JUSTICE ROLF LARSEN AUTHORIZED BY HOUSE RESOLUTION 205 OF 1993

SUBCOMMITTEE ON COURTS

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I. INTRODUCTION.

On November 23, 1993, the House adopted House Resolution No. 205 of 1993, authorizing the House Judiciary Committee to investigate the conduct of Justice Rolf Larsen of the Supreme Court of Pennsylvania, and to determine whether Justice Larsen is liable to impeachment for misbehavior in office. Under the Resolution, the Committee designated its Subcommittee on Courts to conduct the investigation.

The Judiciary Committee and the Subcommittee on Courts retained John P. Moses, Esquire and J. Clayton Undercofler, Esquire as Special Counsel to assist in the investigation. Special Counsel's Preliminary Report on the progress of the investigation into Justice Larsen's conduct was submitted to the Subcommittee in March 1994.[1] The Report identified several areas of conduct constituting potential grounds for impeachment of Justice Larsen for further consideration by the Committee and Subcommittee.

After further investigation, the Subcommittee on Courts conducted public hearings in Harrisburg on April 20-21, 1994. The Subcommittee took testimony from three witnesses and was presented a summary of investigative findings by Special Counsel.[2] Justice Larsen declined the Subcommittee's invitation to appear before the Subcommittee on April 21, 1994. See Exhibit B hereto. With the exception of the matter involving the will and estate of Jesse Holmes, the Subcommittee's investigation is now substantially completed.

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1 To avoid the possibility of adverse pre-trial publicity, the Preliminary Report was not made public until after Justice Larsen's criminal trial on drug and conspiracy charges on April 4-9, 1994.

2 Special Counsel's written submission to the Subcommittee on April 21, 1994 is attached hereto as Exhibit A.

In this Report, the Subcommittee on Courts reports to the Judiciary Committee its factual findings regarding the conduct of Justice Larsen which it has investigated, its conclusions as to whether Justice Larsen has engaged in conduct constituting "misbehavior in office," and its recommendation.

II. SUMMARY OF THE SUBCOMMITTEE'S CONCLUSIONS AND RECOMMENDATIONS.

A. The Constitutional Standard of Impeachment.

The Subcommittee on Courts has researched the grounds for impeachment set forth in Article VI, Section 6 of the Pennsylvania Constitution to determine whether any conduct of Justice Larsen warrants the adoption of Articles of Impeachment. The Constitution gives the "sole" impeachment power to the House of Representatives. Therefore, it is the unique responsibility of the House to interpret the standard for impeachment in Article VI, Section 6, and to determine whether a judicial officer's conduct falls within that standard. In the Subcommittee's view, "misbehavior in office" in the case of a judge or justice is conduct which brings the courts into disrepute, undermines public confidence in the integrity or impartiality of the court system, or brings into serious question a judicial officer's fitness to remain in office.

B. Impeachable Misconduct by Justice Larsen.

The Subcommittee on Courts has undertaken a comprehensive factual investigation into Justice Larsen's conduct, which has included the gathering of all relevant evidence, both inculpatory and exculpatory. In the Subcommittee's view, each of the allegations of misconduct outlined below is supported by substantial evidence, and bears a close relationship to Justice Larsen's judicial office. Furthermore, the Subcommittee

concludes that the following alleged actions by Justice Larsen constitute "misbehavior in office" under Article VI, Section 6 of the Constitution.[3]

1. From at least 1980 and continuing into 1991, Justice Larsen required his office staff to track certain petitions for allowance of appeal to the Supreme Court of Pennsylvania, so that the petitions could be specially handled by the Justice and his staff. Cases were placed on a special list and tracked for Justice Larsen, not because of the legal issues presented or other permissible reasons, but because the attorneys involved were friends and political contributors of Justice Larsen. In each of at least eleven cases on the "special list," Justice Larsen took affirmative steps to advance the allocatur position of these attorneys.

   By affording special consideration to friends and political supporters in the allocatur process, Justice Larsen abused his judicial discretion, violated his duty of impartial treatment to all litigants seeking access to the Supreme Court, and severely compromised the Court's integrity as a public institution.

2. In early 1988, Justice Larsen encouraged an improper ex parte contact by Richard Gilardi, Esquire, at a time when Gilardi had two cases involving petitions for allowance of appeal pending before the Supreme Court. Gilardi requested Justice Larsen to personally review the pending petitions, contrary to Justice Larsen's ordinary practice. Justice Larsen asked Gilardi to indicate the position he was advocating as to each of the petitions, and had each of the cases placed on the special list. Justice Larsen took action favorable to Gilardi's position on each of the two petitions for allowance of appeal.

   By encouraging and engaging in an ex parte meeting with an attorney regarding two pending petitions for allowance of appeal, and by having those petitions tracked by his office for special handling, Justice Larsen acted on account of selected private interests, created an appearance of impropriety, and again failed to give fair and equal consideration to all litigants seeking access to the Supreme Court, to the detriment of the Court's integrity as a public institution.

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3 The Subcommittee is continuing its investigation into Justice Larsen's involvement with the will and estate of Jesse Holmes to determine whether it constitutes impeachable misconduct.

3. In his testimony before the Ninth Statewide Investigating Grand Jury, Justice Larsen, while under oath, made false statements which were intended to mislead the grand jury. Specifically, Justice Larsen falsely testified that he never discussed with Richard Gilardi the two pending petitions for allowance of appeal in which Mr. Gilardi represented a party in early 1988.

By making false statements intended to mislead the grand jury, Justice Larsen used deceit to impede a criminal investigation, casting doubt on his personal integrity and veracity and his fitness to perform his judicial office in the future.

4. In May 1986, Justice Larsen initiated an ex parte meeting with Judge Eunice Ross of the Allegheny County Court of Common Pleas in a pending matter and provided information from an undisclosed source which was potentially beneficial to a litigant in the matter who was represented by a friend of Justice Larsen. Justice Larsen disregarded accepted channels of communication in providing the information ex parte to Judge Ross.

By initiating an ex parte contact with a trial court judge, Justice Larsen attempted to influence the outcome of a legal proceeding through improper channels, creating an appearance of impropriety and undermining the integrity and independence of the Commonwealth's judicial system, in particular, its lower courts.

5. Justice Larsen deliberately misused the legal process when he accused Justice Zappala and Justice Cappy of criminal and judicial misconduct, in an attempt to obtain a reversal of his own reprimand arising from a proceeding before the Judicial Inquiry and Review Board. Justice Larsen made serious and damaging allegations under verification without a reasonable basis to believe that those allegations were true at the time they were made. Justice Larsen could not later supply credible evidence to support the allegations when given the opportunity to do so before the Ninth Statewide Investigating Grand Jury. The allegations were made in bad faith and with a reckless disregard for the truth.

By making reckless, unfounded allegations of serious misconduct against fellow Supreme Court justices in a publicly filed court document, Justice Larsen deliberately misused the legal process for the purpose of reversing his own reprimand for misconduct. In doing so, Justice Larsen cast the Supreme Court into scandal and disrepute, damaging public confidence in the Court and demonstrating a contempt

for the very institution whose integrity and respectability he is charged to uphold.

6. While a member of the Supreme Court of Pennsylvania, Justice Larsen regularly obtained psychotropic drugs for his own use by causing a physician to issue prescriptions for the drugs in the names of members of Justice Larsen's staff. Justice Larsen directed his subordinates to pick up the drugs and deliver them to him, thereby causing court employees to participate in an unlawful conspiracy to conceal his prescription drug use, exposing them, as well as his personal physician, to potential prosecution under Pennsylvania's criminal laws and other serious consequences.

   By inducing court employees to participate in an unlawful conspiracy to conceal his prescription drug use, Justice Larsen violated the criminal laws of the Commonwealth in contravention of his oath of office, and misused the prominence and authority of his position as a Supreme Court justice to influence others to participate in those violations.

7. Justice Larsen took an oath to defend the Constitutions of the United States and the Commonwealth of Pennsylvania and to discharge the duties of his office with fidelity. He is bound to uphold the integrity of the judiciary, to avoid impropriety and appearances of impropriety, and to perform the duties of his office impartially. By engaging in the conduct specified in the preceding subparagraphs, Justice Larsen undermined public confidence in the integrity and impartiality of the judiciary and betrayed the trust of the people of the Commonwealth of Pennsylvania, thereby bringing disrepute on the Courts of the Commonwealth.

   Viewed in the aggregate, there is little doubt that Justice Larsen's conduct renders him liable to impeachment. The many aspects of Justice Larsen's misconduct create an independent basis for concluding that he has engaged in misbehavior in office warranting impeachment. Indeed, it is the cumulative effect of Justice Larsen's misbehavior that has the most profound and deleterious impact on the integrity of the judiciary as an institution. Justice Larsen's actions, taken in the aggregate, create the strongest case for his removal from office by impeachment.

C. The Subcommittee's Recommendations.

As a result of its investigation into the conduct of Justice Larsen pursuant to House Resolution 205 of 1993 to determine whether Justice Larsen is liable to impeachment, the Subcommittee on Courts hereby makes the following recommendations to the Judiciary Committee:

1. That the Judiciary Committee adopt the findings and conclusions of this Report.

2. That the Judiciary Committee report to the House its recommendation that Articles of Impeachment be prepared against Justice Rolf Larsen of the Supreme Court of Pennsylvania.

3. That the Judiciary Committee adopt a Resolution to appoint a Special Committee to prepare Articles of Impeachment against Justice Rolf Larsen consistent with Articles of Impeachment adopted by the Subcommittee on Courts at its public meeting on April 22, 1994 and attached hereto as Exhibit C.

4. That the Judiciary Committee report its findings and conclusions to the House and recommend that the House adopt the foregoing Resolution.

III. BACKGROUND.

A. Investigations into Justice Larsen's Conduct by the JIRB and the Ninth Statewide Investigating Grand Jury.

In 1988, the Judicial Inquiry and Review Board ("JIRB") charged Justice Larsen with several violations of Article V, section 17(b) of the Pennsylvania Constitution and the Code of Judicial Conduct. One allegation was that Justice Larsen tried to influence

Judge Eunice Ross of the Allegheny County Court of Common Pleas in a matter involving the Estate of Homer Douglas Francis, in order to assist a friend of Justice Larsen who was representing a litigant in the matter. On July 17, 1991, the JIRB reported its findings to the Pennsylvania Supreme Court. The JIRB found that Justice Larsen, acting without improper motive, had created an appearance of impropriety by meeting ex parte with Judge Ross regarding a pending case. The JIRB recommended that Justice Larsen be publicly reprimanded.

On October 14, 1992, the Pennsylvania Supreme Court adopted the JIRB's recommendation that Justice Larsen be publicly reprimanded for the improper ex parte communication with Judge Ross. Justice Stephen A. Zappala and Justice Ralph J. Cappy voted in favor of the order, while Justice Nicholas P. Papadakos dissented. No other justices participated in the decision. Shortly thereafter, Justice Larsen filed a petition for disqualification and recusal of Justices Zappala and Cappy and later a supplemental petition for recusal, alleging that they and other individuals had engaged in various forms of criminal and other misconduct. Justice Larsen's allegations prompted a nine-month inquiry by the Ninth Statewide Investigating Grand Jury. The ostensible purpose of the inquiry was to determine whether his fellow Supreme Court Justices had, in fact, committed the crimes alleged by Justice Larsen. The grand jury's Report No. 1 was made public on November 5, 1993.

In its Report, the grand jury concluded that Justice Larsen's allegations were not supported by credible evidence and that Justice Larsen had made many of the allegations "in bad faith and with reckless disregard for the truth." Additionally, the grand jury reported

on two other areas of conduct. It reported that, over the past ten years, Justice Larsen had (1) systemically maintained a list of petitions for allowance of appeal to be afforded special handling by his staff, and (2) regularly obtained psychotropic prescription drugs for his own use by causing a physician to issue prescriptions for the drugs in the names of members of Justice Larsen's staff.

At the conclusion of its inquiry into Justice Larsen's practice of obtaining prescription drugs, the grand jury issued its Presentment No. 5 recommending that criminal charges be brought against Justice Larsen. The Pennsylvania Attorney General's Office brought a 27-count criminal complaint against Justice Larsen on October 29, 1993, alleging criminal conspiracy and multiple violations of the Controlled Substances Act, 35 P.S. § 780-113(a)(12), (14). After the preliminary hearing in the matter on November 8, 1993, 13 of the counts were dismissed on statute of limitations grounds. On April 9, 1994, after a 5-day trial, Justice Larsen was found guilty of two felony conspiracy counts and acquitted of all remaining counts. Sentencing is scheduled for June 13, 1994.

B. The Subcommittee's Independent Investigation into Justice Larsen's Conduct.

The Subcommittee on Courts has acted to assure the independence, integrity and completeness of its investigation into whether Justice Larsen engaged in conduct warranting his removal from office by impeachment. The Subcommittee has undertaken not simply to accept the conclusions of the JIRB in recommending Justice Larsen's reprimand, nor of the grand jury in its extraordinarily detailed 249-page Report No. 1. Rather, the Subcommittee has sought to identify the facts underlying those conclusions, subject them to critical analysis, and independently judge their significance in light of its unique mandate.

On behalf of the Subcommittee, Special Counsel petitioned the Honorable G. Thomas Gates, Supervising Judge of the Ninth Statewide Investigating Grand Jury, for access to all testimony and other matters presented to the Grand Jury pertaining to Notice of Submission No. 9. On December 3, 1993, Judge Gates granted the request for access, excluding only portions of the record relating to a discrete, ongoing portion of the Grand Jury's investigation.[4]

The Office of the Attorney General has granted the Subcommittee access to nearly 150 detailed witness interview reports compiled by law enforcement agents in connection with the grand jury investigation, as well as related documentary materials. In addition, the Subcommittee has obtained the record from the 1988-1989 JIRB proceeding ("the JIRB Matter") concerning Justice Larsen.

Since early January 1994, the Subcommittee has conducted an exhaustive review and analysis of the evidence adduced in the grand jury matter and the JIRB Matter and the additional investigative materials obtained by Special Counsel. The grand jury record alone includes over 3,400 pages of testimony from 20 witnesses; and over 350 exhibits containing thousands of pages. Testimony before the JIRB was equally voluminous. In addition to its review of the document record, the Subcommittee has independently interviewed various central witnesses from these prior proceedings. The Subcommittee has

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4 See Petition for Disclosure of Grand Jury Materials to the Judiciary Committee of the Pennsylvania House of Representatives (Exhibit "D" hereto); Memorandum of Law in Support of Petition for Disclosure of Grand Jury Materials (Exhibit "E" hereto); Transcript of Hearing before Judge G. Thomas Gates on December 3, 1993 (Exhibit "F" hereto); Judge Gates' Order granting access to grand jury materials dated December 3, 1993 (Exhibit "G" hereto).

taken testimony under subpoena in Pittsburgh and Harrisburg and has subpoenaed documents from various persons and organizations. Special Counsel also conferred on numerous occasions with the investigators who supported and directed the grand jury matter in an effort to avoid costly and time-consuming duplication of investigative work product. Finally, Subcommittee members, Special Counsel and Counsel to the Subcommittee have met with Daniel Freeman, Esquire, Counsel and Parliamentarian to the Judiciary Committee of the United States House of Representatives, and Alan I. Baron, Esquire, Special Counsel to the House Subcommittee which considers impeachments in Congress. These attorneys provided advice in light of their experience in the impeachments of Federal Judges Hastings, Nixon, and Claiborne. In addition, prior to the adoption of House Resolution No. 205 of 1993, a legal and historical analysis of impeachments in Pennsylvania was conducted. On September 25, 1993, that legal and historical analysis was reviewed at a public meeting of the Judiciary Committee of the House of Representatives.

Throughout this process, the Subcommittee has adhered to Judge Gate's Order granting access, carefully protecting the confidentiality of all grand jury materials in its custody. Those grand jury materials, and all other non-public investigative materials in the Subcommittee's possession have been and will continue to be maintained in strictest confidence and will be disclosed only as necessary to conduct any proceedings which may arise from the Subcommittee's investigation.

IV. "ANY MISBEHAVIOR IN OFFICE" AS GROUNDS FOR IMPEACHMENT UNDER ARTICLE VI, SECTION 6 OF THE PENNSYLVANIA CONSTITUTION.

Article VI, Section 4 of the Pennsylvania Constitution vests the sole power of impeachment in the House of Representatives. Article VI, Section 6 sets forth the grounds for impeachment of civil officers of the Commonwealth:

> The Governor and all other civil officers shall be liable to impeachment for any misbehavior in office, but judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of trust or profit under this Commonwealth; the person accused, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment and punishment according to law.

Based on the legal analysis which follows, the Subcommittee has reached several conclusions regarding the types of "misbehavior" the House of Representatives may consider as impeachable conduct by a Supreme Court justice under Article VI, Section 6 of the Pennsylvania Constitution:

1. Because the House has the sole power of impeachment, it has broad discretion to consider a variety of serious misconduct as grounds for impeachment. If the misconduct may bring the courts into disrepute, undermine public confidence in the integrity or impartiality of the court system, or bring into serious question a justice's fitness to remain in office, it may be considered.

2. Impeachable misconduct is not limited to criminal offenses, but it must be serious and substantial in nature, and reasonably related to the judicial office of the subject.

3. The House of Representatives may consider a person's misconduct in the aggregate in considering whether he or she is liable to impeachment.

A. The House as Sole Possessor of the Impeachment Power.

The Pennsylvania Constitution does not merely give the House of Representatives the power of impeachment; it gives the House sole power of impeachment. As the United States Supreme Court has observed in the context of interpreting the Senate's sole power to try all impeachments under the United States Constitution, "[W]e think the word 'sole' is of considerable significance. Indeed, the word 'sole' appears only one other time in the Constitution -- with respect to the House of Representatives' 'sole power of Impeachment.'" Nixon v. United States, ___U.S.___, 113 S. Ct. 732, 736 (1993). The term "sole," opined the Court, is defined as "'functioning . . . independently and without assistance or interference.'" Id. "If the courts may review the actions of the Senate," concluded the Court, "it is difficult to see how the Senate would be 'functioning. . . without assistance or interference.'" Id.

As to the identically worded impeachment clause in the Pennsylvania Constitution, the Pennsylvania Supreme Court has likewise concluded that "the courts have no jurisdiction in impeachment proceedings, and no control over their conduct, so long as actions taken are within constitutional lines." In re Investigation by Dauphin County Grand Jury, 332 Pa. 342, 345, 2 A.2d 802, 803 (1938). Other state supreme courts, interpreting comparable impeachment clauses, have reached the same conclusion. See, e.g., Mecham v.

Arizona House of Representatives, 162 Ariz. 267, 268, 782 P.2d 1160, 1161 (1989); Forbes v. Earle, 298 So. 2d 1, 5 (Fla. 1974).

Inherent in the delegation of the exclusive impeachment power to the House of Representatives, and necessary to its exercise, is the authority to determine, on a case-by-case basis, whether certain charged conduct constitutes "misbehavior in office." As one state Supreme Court has put it, to make "[t]he determination of what is an impeachable offense. . . is the responsibility of the legislature." Forbes, 298 So. 2d at 5 (Fla. 1974). This is not to suggest that the House's power to impeach is unfettered. Article VI, Section 6 circumscribes that power by limiting impeachable conduct to "any misbehavior in office." The General Assembly may not, for example, remove judicial officers from office at its whim for insubstantial conduct bearing not at all on the official's public office. On the other hand, the House's impeachment power is plenary when exercised within its constitutional limits, and the courts can not interfere with the House's exercise of that power. Dauphin County Grand Jury, 332 Pa. at 343, 2A.2d at 803. See also Nixon v. United States, ___U.S. ___, 113 S. Ct. 732, 738-39 (1993) (manner in which United States Senate exercises its sole authority to "try" impeachments is not reviewable by courts). Thus the House of Representatives -- as the "sole" grantee of the impeachment power -- has the right and responsibility to assess when misbehavior in office has occurred, "without assistance or interference" from the other branches of government.

B. The Meaning of "Any Misbehavior in Office".

The present standard of impeachable conduct, "any misbehavior in office," was adopted as part of the 1966 amendments to the Pennsylvania Constitution. It replaced "any

misdemeanor in office" which was the standard for impeachment in prior Pennsylvania Constitutions dating back to 1790.[5] The only "legislative history" explaining the 1966 amendment is a short reference in the Pennsylvania Constitutional Revision 1966 Handbook, published by the Pennsylvania Bar Association, stating that "It eliminates the very ambiguous expression 'misdemeanor in office,' and substitutes for it the words 'misbehavior in office'." The ambiguity to which the Handbook likely refers is that "misdemeanor" has at least two ordinary meanings: one, a "misdeed"; and two, "An offense of lesser gravity than a felony." The American Heritage Dictionary (1982). If impeachable conduct is defined with reference to the commission of a "misdemeanor", then, ambiguity arises as to whether the term "misdemeanor" is limited to conduct constituting a crime.

Under the United States Constitution, which lists "high crimes and misdemeanors" among the impeachable offenses, the weight of authority holds that impeachable misdemeanors are not limited to crimes, although the issue is not free from doubt.[6] In Pennsylvania, the scope of "any misdemeanor in office" within the meaning of

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5 See Pa. Const. of 1790, Article IV, § 3; Pa. Const. of 1838, Article IV, § 3; Pa. Const. of 1874, Article IV, § 3. The 1776 Pennsylvania Constitution, however, authorized the removal of judges by the General Assembly for "misbehavior."

6 The view that a "misdemeanor" includes misconduct that does not constitute a criminal offense is supported by evidence of original intent and by precedent. Alexander Hamilton described conduct impeachable under the Constitution broadly, as "offenses which proceed from the misconduct of public men, or in other words, from the abuse or violation of some public trust." The Federalist No. 65. Professor Gerhardt further notes, "Delegates to state ratification conventions often referred to impeachable offenses (but not necessarily as criminal) and they frequently spoke of how impeachment should lie if the official 'deviates from his duty' or if he 'dares to abuse the power vested in him by the people.'" Michael Gerhardt, The Constitutional Limits to Impeachment and its Alternatives, 68 Tex. L. Rev. 1, 85 (1989).

previous constitutions likewise remained unclear,[7] although the Pennsylvania Supreme Court had, in dicta, interpreted the phrase to mean "a criminal act in the course of the conduct of the office." Dauphin County Grand Jury, 332 Pa. at 345, 2 A.2d at 803.[8]

In 1966, the General Assembly and the People eliminated the ambiguity associated with "misdemeanor" by replacing it with a broader term -- "misbehavior" -- a term which encompasses any variety of improper or unacceptable behavior. The plain meaning of "misbehavior" is not limited to criminal misconduct. Unlike other sections of the

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In addition, while Articles of Impeachment have generally included charges that the judge in question committed crimes, they have not been limited to allegations of criminal wrongdoing. Judge Halsted Ritter, for example, was acquitted of two Articles of Impeachment charging income tax evasion, but convicted on a third which charged that the consequence of his conduct was "to bring his court into scandal and disrepute, to the prejudice of said court and public confidence in the administration of justice." Raoul Berger, Impeachment 56-58 (1973).

7 Although there have been no judicial impeachments since 1811, non-criminal conduct has provided the basis for various impeachment investigations and proceedings under the "misdemeanor" standard. See, e.g., Resolution Relative to Investigation of Charges Against Judge Umbel, Legislative Journal -- House (Mar. 17, 1915) (alleging "corrupt bargain" between Judge Umbel and individual who accused him of misconduct whereby accuser would withdraw his charges if Judge Umbel would resign so as to cause the election of his successor to occur within a certain period of time); Report of the Special Committee Appointed to Consider Charges Against Honorable Henry A. Fuller, Legislative Journal - House (May 12, 1913) (special committee of House investigated 16 charged instances of official misconduct, none of them the commission of a crime). The Subcommittee agrees with the majority view that impeachable offenses are not limited to indictable criminal offenses.

8 Such dicta was offered without regard to whether judicial imposition of the applicable standard for impeachment would interfere with the House of Representatives' "sole" power of impeachment, and in light of Nixon v. United States, ___U.S. ___, 113 S. Ct. 732 (1993), there is every reason to believe that it would.

Constitution relating to automatic removal of judicial officers,[9] Article VI, Section 6 contains no explicit reference to an adjudication pursuant to the criminal laws. The framers of Article VI, Section 6 could easily have made conviction of a crime a prerequisite to impeachment proceedings, but chose not to do so. Furthermore, the framers of Article VI, Section 6, expressed their intent that "misbehavior" be construed expansively, rather than restrictively, by retaining the modifier "any." Thus the precise language selected by the General Assembly and the People in modifying Article VI, Section 6 in 1966 is strong evidence of an intent to clarify the House's broad discretion to consider a variety of conduct as potentially impeachable, rather than to narrow that discretion.[10]

Moreover, any doubts regarding the scope of "misbehavior in office" are committed to the House for resolution, since the text of Article VI, Section 6 itself provides general, rather than precisely circumscribed boundaries of what constitutes impeachable

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9 See Article V, Section 18(d)(3), which specifically requires that a judicial officer be "convicted of misbehavior in office by a court" prior to operation of that section's provision for automatic forfeiture of office. Similarly, Article VI, Section 7, provides for automatic removal of civil officers "on conviction of misbehavior in office or of any infamous crime." Automatic removal provisions are limited to criminal misconduct, not because "misbehavior" means criminal misbehavior, but because Article V, Section 18 and Article VI, Section 7 permit removal for misbehavior in office only upon conviction by a court.

10 Consistent with the revision to Article VI, Section 6, the framers and the People enacted new provisions for removal of judicial officers in 1968, in Article V, section 18 of the Constitution. Under that section, as further amended in 1993, a judicial officer may be removed by a special Court of Judicial Discipline for "conviction of a felony; violation of section 17 of this article [prohibiting certain activities]; misconduct in office; neglect or failure to perform the duties of office or conduct which prejudices the proper administration of justice or brings the judicial office into disrepute, whether or not the conduct occurred while acting in a judicial capacity or is prohibited by law; or conduct in violation of a canon or rule prescribed by the Supreme Court." Pa. Const. Art. V, § 18(d)(1).

conduct. See Nixon v. United States, 113 S. Ct. at 740. Because Article VI, Section 6 does not explicitly limit "misbehavior in office" to criminal offenses, it would be an impermissible intrusion into the House's sole impeachment power for any other branch of government to place such a restriction on the House's exercise of its discretion. Similarly, nothing in Article VI, Section 6, expressly or by implication precludes the House from considering a public officer's conduct, criminal or non-criminal, in the aggregate in evaluating his or her liability to impeachment.[11]

C. The Grounds for Impeachment are not Limited to the Grounds for Automatic Removal Under Other Sections of the Constitution.

Article V, Section 18(d)(3) of the Constitution mandates "automatic" forfeiture of office in the case of a judicial officer who has been convicted of misbehavior in office by a court. Article VI, Section 7 also mandates automatic removal of civil officers "on

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11 The most recent impeachment resulting in conviction in Pennsylvania was that of Honorable Thomas Cooper, President Judge of Northumberland, Luzerne and Lycoming Counties, in February 1811. Judge Cooper's impeachment and conviction were based on an aggregation of his misconduct, rather than any particular episode of misconduct. Judge Cooper was charged with levying fines and imprisonments upon persons who whispered in court and wore hats, deciding cases in which he had a pecuniary interest, berating witnesses, carrying deadly weapons to the courthouse, and refusing to hear parties speak in their own defense. The Senate declared his behavior arbitrary, unjust and precipitate contrary to sound principles and dangerous to the pure administration of justice. Federal judges have similarly been impeached and convicted on multiple episodes of misconduct. In 1989, for example, 17 separate Articles of Impeachment were brought against Judge Alcee L. Hastings of Florida. The charges included conspiracy to obtain a bribe, false statements under oath, disclosure of confidential wiretap information that thwarted a federal law enforcement investigation, and undermining confidence in the integrity and impartiality of the judiciary through all of the above. H.R. Res. 499, 100th Cong., 2d Sess. (Aug. 9, 1989). Judge Walter L. Nixon of Mississippi faced three articles of impeachment in 1989: two charges of perjury and a similar charge of undermining public confidence in the judiciary. Both judges were convicted by the Senate.

conviction of misbehavior in office or of any infamous crime."[12] Two recent Supreme Court cases have explored what kinds of criminal misconduct trigger automatic removal under these sections. In In re Braig, 527 Pa. 248, 252, 590 A.2d 284, 286 (1991), the Court held that a judicial officer is "convicted of misbehavior in office" within the meaning of Article V, Section 18(1) (the predecessor to Section 18(d)(3)), if he is convicted of a crime "consisting of the failure to perform a positive ministerial duty of office or the performance of a discretionary duty with an improper or corrupt motive." In In re Scott, 528 Pa. 206, 209, 596 A.2d 150, 151 (1991), the court expanded the definition to encompass crimes involving "misuse of the judicial office."

In the Subcommittee's view, Justice Larsen has engaged in conduct that would in fact satisfy the definition of "misbehavior in office," as the courts have defined the phrase

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12 Article VI, Section 7 is self-executing; removal can be imposed as part of a judgment of sentence in the trial court where the civil officer is convicted. See, e.g., Commonwealth ex rel. Specter v. Martin, 426 Pa. 102, 118, 232 A.2d 729, 738 (1967).

in Article V, Section 18 and Article VI, Section 7 proceedings.[13] Nevertheless, the House of Representatives is not bound by those definitions for numerous reasons.

First, as explained above, it is the House's sole responsibility to interpret and apply the impeachment clause, making the interpretation of other clauses providing for removal of civil officers offered by other branches of government irrelevant.

Second, the breadth of the phrase "misbehavior in office" in the automatic removal sections of the Constitution is necessarily constrained by the textual requirement of a conviction by a court. In no way is "misbehavior in office" as used in the impeachment clause limited to misbehavior in office that results in a conviction by a court. Moreover, the sanction of removal for misbehavior in office under the automatic removal sections of the Constitution is imposed as part of a sentence that follows a criminal conviction. See Commonwealth ex rel. Specter v. Martin, 426 Pa. 102, 118, 232 A.2d 729, 738 (1967). In criminal proceedings in which the court may have no alternative but to impose the sentence

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13 Exhibit C hereto contains the Subcommittee's recommendation as to text and form of Articles of Impeachment against Justice Larsen. Articles I, II and III allege that Justice Larsen tracked allocatur petitions for the benefit of friends, and falsely denied having done so before the grand jury -- conduct qualifying as the performance of a discretionary duty with an improper motive. Justice Larsen's improper ex parte contact with Judge Ross for the apparent benefit of a friend, as alleged in Article IV, qualifies as a misuse of his office. Article V, in which Justice Larsen is alleged to have made unfounded allegations in a petition for recusal of Justices Zappala and Cappy as a means to avoid reprimand, is again either the performance of a discretionary duty with an improper motive, or a misuse of his office. Article VI, alleging that Justice Larsen influenced his staff to participate in an unlawful conspiracy to conceal his prescription drug use, is a blatant misuse of his office. Finally, Article VII is based upon the preceding six articles, each of which independently qualifies as one or more forms of "misbehavior in office."

of removal from office upon conviction, it is understandable that "misbehavior in office" would be construed more narrowly than under the impeachment clause.

Third, the definition of "misbehavior in office" is necessarily narrower and less flexible in automatic removal proceedings than in impeachment proceedings, because there is nothing "automatic" about impeachment proceedings. Civil officers who are subject to impeachment proceedings are not automatically removed from office. They are constitutionally entitled to trial in the Senate, and may not be convicted and removed from office except upon the vote of two-thirds of the members present. Pa. Const., Art. VI, § 6. Moreover, in the House of Representatives, the concurrence of the majority is required for Articles of Impeachment to be presented to the Senate in the first place. Thus, the Constitution disperses the impeachment decision among the decision-making bodies in Commonwealth government which are the most diverse and numerous in membership, and most immediately accountable to the electorate. A civil officer may be impeached and convicted only through a deliberate, public process which affords its subject both procedural protections and the protection that is provided by the public accountability of each of the members of the General Assembly who participate in the process.

Unlike the Constitution's automatic removal provisions, the impeachment process permits the General Assembly to evaluate the seriousness of charged misconduct. The House can refuse to impeach where only technical criminal violations of no substance have been charged; conversely, it must be free to impeach where serious misconduct threatens the integrity of state government, but is not technically a crime.

To ensure that the impeachment process serves its remedial purpose of restoring the integrity of state government, it is critical that "misbehavior in office" be defined more broadly and flexibly than in automatic removal proceedings. The fact that Article VI, Section 6 makes "any" misbehavior in office impeachable underscores the framers' intent to provide that breadth and flexibility. If a judge, by his behavior in an isolated incident, or cumulatively through a series of incidents, undermines public confidence in his office or casts the judiciary as an institution into disrepute, such conduct constitutes impeachable misbehavior in office. Whether his conduct would also constitute a common law crime and thereby satisfy the technical requirements for automatic removal pursuant to Article V, Section 18 and Article VI, Section 7 is irrelevant.[14]

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14 Indeed, it would be entirely incongruous to construe the grounds for impeachment under Article VI, Section 6 as limited to conduct satisfying the elements of the common law crime of misbehavior in office. Such a construction would render the impeachment power narrower than the grounds for automatic removal from office pursuant to Article VI, Section 7, which reaches both crimes constituting misbehavior in office, and "infamous" crimes. At common law, "infamous crimes" were crimes which, upon conviction, rendered a person incompetent to be a witness or juror. These included treason, felony, forgery, perjury, subornation of perjury, attaint of false verdict, and other offenses involving the charge of falsehood, and affecting the public administration of justice. See In re Braig, 527 Pa. 248, 252 n.4, 590 A.2d 284, 286 n.4 (1991). See also In re Greenburg, 442 Pa. 411, 417, 280 A.2d 370, 372-73 (1971), vacated on other grounds, 457 Pa. 33, 318 A.2d 740 (1974) (federal crime of mail fraud was infamous crime); Petition of Hughes, 516 Pa. 90, 96, 532 A.2d 298, 301 (1987) (conspiracy to violate Hobbs Act was infamous crime).

V. SUMMARY OF THE SUBCOMMITTEE'S EVIDENCE THAT JUSTICE LARSEN HAS ENGAGED IN MISBEHAVIOR IN OFFICE.

A. Justice Larsen Systematically Afforded Special Handling to Selected Petitions for Allowance of Appeal Because the Attorneys Involved Were his Friends and Political Contributors.

From at least 1980 and continuing into 1991, Justice Larsen instructed his office staff to track selected petitions for allowance of appeal to the Supreme Court of Pennsylvania, so that the petitions could be specially handled by the Justice and his staff. The petitions were put on a special list and tracked not because of the legal issues presented, but because the attorneys involved were friends and political contributors of Justice Larsen. Justice Larsen gave special treatment to cases on the list by monitoring their progress throughout the allocatur process and by taking affirmative steps to advance the allocatur position advocated by attorneys who were his friends. The Subcommittee finds that Justice Larsen abused his judicial discretion in failing to treat all litigants seeking access to the Supreme Court fairly and equally. Instead, Justice Larsen chose to give favorable treatment to selected private interests, and thereby compromised the integrity of the Court's deliberative processes.

1. The Allocatur Process.

The Supreme Court is the court of last resort in Pennsylvania. With the exception of certain narrow categories of cases, jurisdiction in the Court is discretionary. For litigants generally, even those with meritorious appeals, it is very difficult to gain access to the Supreme Court. On average, only one in ten petitions for allowance of appeal are granted. For a petitioner, denial of allowance of appeal is no less final and binding than an adverse ruling on the merits.

The process by which the Supreme Court chooses cases to be heard on the merits is non-public and subject to no comprehensive written operating procedures. Rather, the process is governed by custom, and the decisions to grant or deny appeals are an exercise of each justice's complete and unreviewable discretion.[15] Because that discretion is exercised as part of a process that is currently hidden from public view and unreviewable, it is incumbent upon each Supreme Court justice to hold himself to the highest standard of impartiality and fairness when deliberating each and every petition for allowance of appeal.

Litigants seeking to have appeals heard by the Supreme Court of Pennsylvania file petitions for allowance of appeal with the Supreme Court prothonotary in the Western, Middle, or Eastern District. At filing, a docket number is assigned to the petition. The appellee, or respondent, has fourteen days to file a response. Petitions are assigned on a rotating basis to one of the seven Supreme Court justices. After reviewing the issues raised, the assigned justice circulates an "allocatur report" recommending a grant of appeal or denial of appeal. A justice who disagrees with a recommended denial may file a counter-report recommending a grant. If at least two justices join a recommended grant, the petition is allowed and the case is moved onto the Court's appeal docket for argument and decision on the merits.

In Justice Larsen's chambers, petitions assigned to Justice Larsen were ordinarily transmitted by his staff to Nick Fisfis, a Duquesne Law School professor, for

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15 It is generally recognized that the purpose of the Supreme Court is not to correct every error by a court below, but to settle disputed legal principles, establish precedent, and declare the law of the Commonwealth where a case presents an appropriate opportunity to do so.

assignment to a part-time allocatur clerk to prepare a draft allocatur report. Ordinarily, Justice Larsen would have no contact with allocatur petitions assigned to him until a draft allocatur report was returned for his review by one of the law professors who were his part-time allocatur clerks.

Petitions assigned to other Justices would be filed in Justice Larsen's chambers, with no action taken pending receipt of the allocatur report circulated by the assigned justice. Prior to 1987, Justice Larsen would read all of the allocatur reports prepared by the other justices. In about 1987, Justice Larsen's law clerks began screening the allocatur reports of other justices and deciding which ones Justice Larsen should read.

2. Justice Larsen's Special List.

In 1980 or earlier, Justice Larsen began giving his secretaries the names and docket numbers of selected allocatur petitions for tracking and special handling. The cases were placed on a list that grew longer over time. At its longest, as many as 15 to 20 cases were on the list. Sometimes, Justice Larsen would provide docket numbers to his secretaries on small scraps of paper that were to be destroyed, sometimes a copy of a petition cover sheet would be provided. In many instances, the docket number of the case to be tracked would be supplied by Justice Larsen even before the petition papers were received in chambers from the prothonotary's office. Justice Larsen demanded to see any incoming papers regarding the specially listed cases immediately, contrary to his ordinary office procedures. Justice Larsen also demanded to be told to which justice each case was assigned.

At least five former secretaries and law clerks to Justice Larsen have acknowledged the existence of the special list. A sixth employee testified that Justice Larsen

asked her to keep track of certain allocatur petitions, which she kept on her desk for reference. Barbara Roberts and Janice Uhler, who were primarily responsible for the list from 1980 to 1989, testified that Justice Larsen requested that they keep the list hidden and ultimately destroy the list. Justice Larsen, however, has absolutely denied any knowledge of a special list of allocatur petitions. He has further denied that he ever gave allocatur docket numbers to secretaries and asked them to alert him when those cases arrived in the office. Contrary to Justice Larsen's testimony, Leonard Mendelson, Esquire, an attorney whose firm had at least seven cases on the special list, admitted to the grand jury that he may have alerted Justice Larsen to his cases coming into the Supreme Court, and may have forwarded docket numbers for the cases.[16]

3. The Subcommittee Has Identified Fourteen Cases that Were Placed on the Special List Kept in Justice Larsen's Chambers.

In the grand jury, members of Justice Larsen's staff identified five cases appearing on the special list. In testimony before the Subcommittee on April 20, 1994, Justice Larsen's former secretary, Justice Uhler, identified thirteen cases which she recalled as having appeared on the special list. In all, fourteen "special list" cases have been identified. Attorneys in these cases were friends and political contributors of Justice Larsen: Leonard Mendelson, Esquire (and another attorney from Mendelson's firm), S. Michael Streib, Esquire, Robert C. Daniels, Esquire, and Richard Gilardi, Esquire. As detailed in Exhibit H hereto, in at least eleven of these cases, Justice Larsen took some affirmative

16 Mr. Mendelson testified that his purpose in alerting Justice Larsen to his cases was to provide Justice Larsen an opportunity to recuse himself because of Mendelson's relationship as friend and personal attorney to Justice Larsen.

action to advance the allocatur position of one or another of these attorneys. The cases on the special list identified by the Subcommittee are as follows:

Pittsburgh North, Inc. v. PennDOT, Supreme Court of Pennsylvania, No. 202 W.D. Allocatur Docket 1985, No. 94 W.D. Appeal Docket 1985;

Franklin Interiors v. Wall of Fame Management Co., Supreme Court of Pennsylvania, No. 203 W.D. Allocatur Docket 1985, No. 57 W.D. Appeal Docket 1985;

Tiffany Gall v. Allegheny County Health Department, Supreme Court of Pennsylvania, No. 388 W.D. Allocatur Docket 1986, No. 86 W.D. Appeal Docket 1986;

Estate of Charles Hall, Supreme Court of Pennsylvania, No. 400 W.D. Allocatur Docket 1986, No. 101 Appeal Docket 1986;

Union Real Estate Company of Pittsburgh, et al. v. Jo Vi Jo, Inc. et al., Supreme Court of Pennsylvania, No. 534 W.D. Allocatur Docket 1985;

Earl Miller v. McKeesport Municipal Water Authority, Supreme Court of Pennsylvania, No. 170 W.D. Allocatur Docket 1987, Nos. 72 & 73 W.D. Appeal Docket 1987;

City of Pittsburgh v. Zoning Board of Adjustment of the City of Pittsburgh, Dom Zullo & Irene Dale, Supreme Court of Pennsylvania, No. 62 W.D. Allocatur Docket 1988, No. 62 W.D. Appeal Docket 1988;

Commonwealth v. Edward Lowy, Supreme Court of Pennsylvania, No. 126 W.D. Allocatur Docket 1985, No. 60 W.D. Appeal Docket 1985;

Buttermore v. Aliquippa Hospital et al., Supreme Court of Pennsylvania, No. 579 W.D. Allocatur Docket 1987, No. 53 W.D. Appeal Docket 1987;

Driscoll et al. v. Carpenters District Council, Supreme Court of Pennsylvania, No. 79 W.D. Allocatur Docket 1988, No. 94 W.D. Appeal Docket 1988;

Marvin J. Levin v. Marvin I. Barish et al., Supreme Court of Pennsylvania, Nos. 344 & 381 E.D. Allocatur Docket 1983, Nos. 119 & 120 E.D. Appeal Docket 1983;

Reilly v. SEPTA, Supreme Court of Pennsylvania, No. 404 E.D. Allocatur Docket 1984, No. 146 E.D. Appeal Docket 1984;

City of Philadelphia v. District Council 33 et al., Supreme Court of Pennsylvania, Nos. 647 & 730 E.D. Allocatur Docket 1986, No. 32 E.D. Appeal Docket 1987;

Elma Spencer v. SEPTA, Supreme Court of Pennsylvania, No. 152 E.D. Misc. Docket 1988 (plenary).

Leonard Mendelson, Esquire, a Pittsburgh attorney, has been a close friend of Justice Larsen for approximately 20 years.[17] Witnesses have described him as a mentor and father figure to Justice Larsen. Mendelson hosted Justice Larsen's fiftieth birthday party at Mendelson's home in 1984, and has socialized with Justice Larsen regularly. Mendelson has served as Justice Larsen's personal attorney in various matters through the years, apparently without compensation. In a lawsuit against stockbrokers brought by Justice Larsen in 1981, Mendelson was appointed to an arbitration panel that awarded $56,538 to Justice Larsen. In 1977, Mendelson was Justice Larsen's campaign treasurer. He contributed $1,500 and loaned $2,500 to the campaign. Mendelson testified twice in Justice Larsen's behalf in the JIRB Matter, in 1988 and 1989. His daughter, Ann, was employed as Justice Larsen's secretarial assistant in 1985-1986 and as Justice Larsen's law clerk in 1991-1993.

In seven of the cases on the special list, Leonard Mendelson represented appellants who sought to have allocatur petitions granted. In each of the cases, those petitions were, in fact, granted. In Pittsburgh North, Franklin Interiors, Tiffany Gall, Estate of Charles Hall, and Zullo, Justice Larsen authored the allocatur report or counter-report recommending that the petition for allowance of appeal be granted. In Jo Vi Jo, Justice Larsen joined Justice Hutchinson's recommendation of a per curiam reversal of the lower

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17 The relationship between Justice Larsen and Pittsburgh attorneys Leonard Mendelson and S. Michael Streib is detailed in Exhibit I.

court in favor of Mendelson's client. When the appellee in Jo Yi Jo sought reconsideration of that ruling, Justice Larsen drafted the order recommending that reconsideration be denied.[18]

S. Michael Streib, Esquire, is a professor at Duquesne University Law School and a Pittsburgh attorney who has maintained a legal office in the Mendelson firm's suite in 230 Grant Building since approximately 1982. He has frequently assisted the Mendelson firm in matters handled by that firm and has frequently been referred cases from the firm. Streib is also a friend and personal attorney of Justice Larsen. In 1978-1981, Streib was Justice Larsen's law clerk. During that period, he represented Justice Larsen in two lawsuits against stockbrokers. More recently, Streib has represented Justice Larsen in zoning litigation and in a tax assessment appeal relating to his condominium on Grandview Avenue. Streib was the executor of the estate of Jesse Holmes, from which $170,000 was ultimately paid to Justice Larsen. In 1987, Streib contributed $7,500 to Justice Larsen's retention campaign.

In Commonwealth v. Lowy, one of the cases on the special list, Streib represented Edward Lowy in a Supreme Court appeal seeking a reversal of his burglary conviction on the ground that prosecutors breached an agreement not to prosecute in exchange for Lowy's testimony. The matter had been referred to Streib from Mendelson, who knew Lowy's father, a physician in Pittsburgh. In Lowy, Justice Larsen recommended that the appeal be granted in a counter-report after Justice Flaherty recommended a denial.

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18 The Subcommittee is continuing to investigate what action, if any, was taken by Justice Larsen on the Earl Miller petition.

The appeal was granted on August 23, 1985. Later, after argument, the appeal was dismissed as improvidently granted, with Justice Larsen dissenting.[19]

Richard Gilardi, Esquire, has known Justice Larsen personally for over 10 years, and has contributed over $5,300 to Justice Larsen's two election campaigns. Justice Larsen and Gilardi occasionally would visit each other in their respective offices in the Grant Building in Pittsburgh, and would socialize at banquets and as part of a group of lawyers and businessmen called "Nights-on-the-Town." Gilardi was appointed to the Disciplinary Board of the Supreme Court of Pennsylvania in 1988 after Justice Larsen solicited his resume for the position.

In early 1988, Mr. Gilardi represented parties in two cases in which petitions for allowance of appeal were pending before the Supreme Court in early 1988. The cases were Buttermore v. Aliquippa Hospital and Driscoll v. Carpenters District Council of Western Pennsylvania. While the petitions were pending, Gilardi met Justice Larsen and requested that Justice Larsen, contrary to his ordinary practice, personally review the pending petitions and the briefs in opposition. At Justice Larsen's direction, Gilardi came to Justice Larsen's chambers and gave Justice Larsen copies of the cover pages from the Buttermore and Driscoll cases. On each cover page, as requested by Justice Larsen, Gilardi indicated in writing the position that Gilardi was advocating. On the coversheet for the Buttermore case, in which Gilardi's client was opposing allowance of appeal, Gilardi wrote the word "NO." On the coversheet for the Driscoll case, in which Gilardi's client was seeking allowance of

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19 Streib also assisted the Mendelson firm in the Jo Yi Jo appeal which has been identified as a special list case.

appeal, Gilardi wrote the word "YES." At Justice Larsen's direction, his secretary, Barbara Roberts, took the coversheets and placed the cases on the special list. In Buttermore, Justice Larsen authored an allocatur report which recommended denial of appeal, consistent with the position being advocated by Gilardi. In Driscoll, Justice Larsen voted to join in Justice McDermott's recommendation that appeal be allowed, again in accordance with the position advocated by Gilardi.

Robert Daniels, a Philadelphia attorney, has known Justice Larsen since 1979 and is a personal friend of and political contributor to Justice Larsen. Daniels is one of a small number of attorneys to whom Justice Larsen would send copies of papers he filed in the JIRB Matter. The Subcommittee has identified four special list cases involving Mr. Daniels.

In District Council 33, a municipal workers' union represented by Daniels and the City of Philadelphia filed cross-petitions for allowance of appeal in the Supreme Court. Both petitions were assigned to Justice Larsen, who wrote allocatur reports recommending that the union's appeal be granted and that the City's cross-appeal be denied. The Court followed Justice Larsen's recommendations. In Reilly v. SEPTA, a jury awarded Daniels' client $7.8 million. On appeal to Superior Court, the case was remanded for a hearing on whether the trial judge should have recused himself, placing the jury verdict in jeopardy. Daniels' client sought allowance of appeal in the Supreme Court to review Superior Court's order. Justice Larsen was assigned the petition, and circulated an allocatur report recommending grant of appeal, in which several other justices joined. In Spencer v. SEPTA, Daniels represented the interest of the plaintiff, a girl killed in a train accident. The trial court granted partial summary judgment in favor of SEPTA, limiting damages to $250,000

under 42 Pa. C.S.A. § 8501 et seq. On Daniels' petition, the Court assumed plenary jurisdiction under 42 Pa. C.S.A. § 726.[20] Justice Larsen's actions in connection with Daniels' petition remain under investigation. In Levin v. Barrish, Daniels was a party, not an attorney. His petition for allowance of appeal and the petition for allowance of cross-appeal of his opponent in the litigation were granted by the Supreme Court. Justice Larsen did not participate in the allocatur process or the merits of this action.

4. Justice Larsen's Asserted Reasons for Tracking Allocatur Petitions Are Not Credible.

In his grand jury testimony, Justice Larsen admitted instructing his secretaries to track the activity of selected allocatur petitions (although he denied knowledge of any special list), but maintained that this was for innocent purposes -- to recuse himself in cases involving certain attorneys, to monitor what he believed to be Justice Flaherty's prejudice in cases brought by attorneys William Meehan and Leonard Mendelson, and because of his interest in cases he had read about in the newspapers.

Justice Larsen acknowledged in the grand jury that he kept track of Leonard Mendelson's allocatur petitions so that he could recuse himself at times that Mendelson was representing him in personal matters. However, the Subcommittee has developed evidence that Justice Larsen only recused himself twice[21] in twenty-three cases brought by Mendelson

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20 Jurisdiction pursuant to 42 Pa. C.S. § 726 is reserved for matters "involving an issue of immediate public importance." The urgency of an appeal on behalf of a decedent testing the constitutionality of a statute limiting public entity liability in accident cases is not clear.

21 In one such case, Truck Terminal Realty Co. v. PennDOT, No. 1638 of 1978, Justice Larsen had been the trial court judge and had ruled in Mendelson's favor below only to be reversed by Commonwealth Court. The case was then petitioned to the

or another member of his firm to the Supreme Court in January 1978 through October 1993. See Exhibit J hereto.

Justice Larsen not only participated in the consideration of each of Mendelson's seven allocatur petitions the Subcommittee has identified as being on the special list, he also took affirmative steps in at least six of those cases to assure that the petition would be granted. In two special list cases, Pittsburgh North and Franklin Interiors, Justice Larsen wrote allocatur reports recommending grants at a time when Mendelson was Justice Larsen's unpaid attorney of record in the Highpointe zoning litigation and in the tax assessment appeal for Justice Larsen's condominium on Grandview Avenue in Pittsburgh.

Even with respect to Mendelson firm cases that have not yet been identified as special list cases, Justice Larsen repeatedly participated in the allocatur process at times that Mendelson was representing him.[22] Rather than monitoring Mendelson cases for recusal purposes, the record reflects that Justice Larsen monitored those cases to assure his participation in a manner favorable to Mendelson. Mendelson himself testified in the grand jury that Justice Larsen recommended that he transfer the Highpointe and the condominium tax assessment cases to another attorney so that Justice Larsen could participate in Mendelson cases in the Supreme Court. Finally, it cannot be overlooked that in each of the twenty-two

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Supreme Court shortly after Justice Larsen was elected to the Supreme Court bench. In the other, Allegheny West Civic Council, Nos. 463-466 W.D. Alloc. Dkt. 1993, the allocatur petitions were filed after the special list issue was raised in Justice Larsen's July 19, 1993, grand jury testimony.

22 Notably, in six Mendelson firm cases, Justice Larsen participated in the allocatur process and then recused on the merits, after the appeal had been granted. He wrote a report or counter-report recommending grant of appeal in four of those cases.

decided petitions in which Mendelson or a member of his firm represented a party in the Supreme Court, allocatur was granted or denied in accordance with the position they advocated.[23]

The Subcommittee is equally skeptical of Justice Larsen's explanation to the grand jury that he tracked Leonard Mendelson and William Meehan cases in the Supreme Court in order to monitor a perceived prejudice by Justice Flaherty against each of those attorneys. Justice Larsen testified in the grand jury that he detected a pattern of bias in Justice Flaherty's decisions in about 1982[24] and that he told Meehan and Mendelson to keep their names off Supreme Court cases because Flaherty always voted against them. Justice Larsen also stated that he discussed this alleged voting pattern with Justice Papadakos on several occasions.

Justice Papadakos and Messrs. Meehan and Mendelson all denied or could not recall being told by Justice Larsen of Justice Flaherty's alleged bias at any time prior to the grand jury proceeding in 1993. Moreover, the Subcommittee has reviewed the Mendelson and Meehan cases heard in the Supreme Court since 1979 which it could identify, and detected absolutely no pattern of voting against the positions advocated by these attorneys by Justice Flaherty at any time, much less a pattern discernable in 1982. See Exhibits K & L hereto.

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23 The petition for allowance of appeal in Allegheny West Civic Council is currently pending.

24 Justice Flaherty has served on the Supreme Court since 1979.

5. Justice Larsen's Special Handling of Cases on the Special List was Improper and an Abuse of His Judicial Discretion.

Although controverted by Justice Larsen, the evidence is overwhelming that Justice Larsen had cases placed on the special list not because of the issues involved, but because of the attorney involved. The cases were singled out for special attention. Several members of Justice Larsen's staff understood that the petitions on the list were the ones Justice Larsen wanted to be granted. The Gilardi cases were placed on the special list maintained by Justice Larsen's staff as the result of an improper ex parte contact. In at least eleven of the fourteen special list cases, Justice Larsen took affirmative steps to advance the allocatur position advocated by an attorney friend or supporter.

By singling out petitions for allowance of appeal for special handling, Justice Larsen abused his discretion and failed to perform a core judicial function with fairness and impartiality to all litigants. Justice Larsen made himself accountable to private, personal interests in a judicial function demanding the highest duty of impartiality, creating an unfair advantage for litigants represented by a select few attorneys, to the detriment of all other litigants seeking access to the Commonwealth's highest court.

B. In His Testimony Before the Grand Jury, Justice Larsen Made False Statements While Under Oath Which Were Intended to Mislead the Grand Jury.

The circumstances of the ex parte contact between Richard Gilardi and Justice Larsen were witnessed by three individuals: Justice Larsen, Mr. Gilardi and Barbara Roberts, one of Justice Larsen's secretaries. In the grand jury, both Gilardi and Roberts testified that Justice Larsen had, in fact, instructed Gilardi to write "No" and "Yes" on the allocatur petition cover sheets for the Buttermore and Driscoll as described above. In

addition, physical evidence of this ex parte contact -- the two cover sheets themselves -- was produced to the grand jury. In interviews and his grand jury testimony, Mr. Gilardi acknowledged that the handwriting on the two petitions was his own.

Justice Larsen, however, during his sworn testimony before the grand jury on July 19, 1993, denied that Gilardi ever alerted him to the fact that the two petitions had been filed, that he ever had any discussions with Gilardi relating to the two cases, that Gilardi ever asked him to personally read the allocatur petitions in the two matters, or that he ever received from Gilardi the allocatur petition cover sheets for the cases. Justice Larsen's denial of these matters was unequivocal -- he stated that he would have remembered such matters had they occurred. Justice Larsen's grand jury testimony regarding the Gilardi ex parte contact is attached as Exhibit M hereto.

Based on the testimony of two witnesses, the physical evidence, and the fact that a prominent Pittsburgh attorney gave testimony detrimental to his own personal and professional interests, the Subcommittee finds that Justice Larsen's unequivocal denials of all aspects of the ex parte contact with Mr. Gilardi were false and were intended to mislead the grand jury.

C. Justice Larsen Initiated an Ex Parte Meeting with a Trial Court Judge in a Pending Matter and Provided Her with Information Potentially Beneficial to a Litigant Represented by a Friend of Justice Larsen.

Testimony in the JIRB Matter established that Pittsburgh attorney Robert Lampl represented Homer Douglas Francis in bankruptcy proceedings which were still pending when Mr. Francis died. The matter Estate of Francis was opened on behalf of the estate in 1982, with Judge Eunice Ross of the Allegheny County Court of Common Pleas

presiding. Attorney Jon Botula was appointed co-administrator of the estate, but was subsequently removed. In January 1986, the new administratrix of the Francis estate filed a motion to require Mr. Lampl to return $17,500 he had disbursed for Mr. Francis as his bankruptcy attorney prior to his death. At the time, $500,000 was suspected to be missing from the Francis estate.

Attorney Lampl was represented by attorney James Ashton in connection with the motion. Ashton had been disbarred in the 1970s and readmitted to the bar in 1984, at which time Justice Larsen befriended him. In early 1986, when the motion to require Lampl to return disbursements to the Francis estate was pending, Ashton and Lampl were also co-counsel in Nikolai Zdrale's bankruptcy proceeding. It was Ashton who engineered the sale of the 35.9-acre tract of real estate in Fairfield Township from his client, Mr. Zdrale, to Justice Larsen for $5,000. That transaction closed on in February 1986; outstanding liens on the property were satisfied in May 1986.

In the JIRB Matter, Judge Ross testified that Justice Larsen initiated a private ex parte meeting with Judge Ross in her chambers on May 30, 1986 and "tipped" her that two informants whom Justice Larsen would not name told him that Attorney Botula had received all the money then missing from the Francis estate and used the money to buy a condominium in Florida. According to Judge Ross, Justice Larsen told her, "Botula's the one; you go after Botula." In interviews with House investigators, Judge Ross reiterated this segment of their conversation. In the two weeks after her meeting with Justice Larsen, Judge Ross discussed her concerns regarding the ex parte contact with former United States Attorney Peter Vaira, a personal acquaintance, and Alan Johnson, then United States

Attorney for the Western District of Pennsylvania, both of whom recalled discussing Justice Larsen's "tip."

Justice Larsen, however, testified before the JIRB that the meeting with Judge Ross on May 30, 1986 included no discussion regarding Jon Botula or the Francis estate. Rather, Justice Larsen testified that he and Judge Ross discussed complaints he had received concerning Judge Ross's judicial conduct, including negative comments he had overheard in the steam room at his club.

In the JIRB Matter, the Board found that Justice Larsen's ex parte contact with Judge Ross raised an appearance of impropriety which could undermine public confidence in the Judiciary. The JIRB also found that Justice Larsen's intervention was not made on behalf of Attorney Lampl, or his counsel in the matter, Attorney Ashton. This conclusion is not free from doubt. Attorney Ashton was a personal friend of Justice Larsen's, whose readmission to the bar had been assisted by Justice Larsen and whose book had been typed by Justice Larsen's secretary. The JIRB's conclusion that Justice Larsen's intervention in the Francis matter was not improperly motivated was based, in part, on its assessment that the $5,000 Fairfield Township land deal was an arms-length transaction, and therefore provided no motive for Justice Larsen to attempt to influence Judge Ross on Lampl's or Ashton's behalf in the Estate of Francis case. Mr. Zdrale, the seller of the property, subsequently testified before the grand jury that the total consideration due to him from Justice Larsen in that transaction was $100,000, and included a $95,000 credit toward legal fees owed or to be owed by Zdrale to Ashton.

D. Justice Larsen's Allegations of Criminal and Judicial Misconduct in his Petitions for Recusal of Justice Zappala and Justice Cappy in the JIRB Matter.

As noted above, the Supreme Court's October 14, 1992 Order accepting the JIRB's report and recommendation in the JIRB Matter prompted Justice Larsen to file his petition for disqualification and recusal of Justice Zappala and Justice Cappy on November 14, 1992 (the "Petition for Recusal"). If successful, the petition would have left Justice Papadakos, who had dissented from the October 14, 1992 Order, as the sole participating justice in Justice Larsen's motion for reconsideration of the Order.[25]

Justice Larsen's Petition for Recusal was filed pro se, that is, acting as his own attorney. At Justice Larsen's direction, one of his law clerks, Andrew Schifino, drafted the Petition for Recusal. Although Schifino had no personal knowledge of evidence supporting the allegations in the petition, Justice Larsen assured him that he could "back up everything that he puts in his petition."

Justice Larsen's Petition for Recusal and his Supplemental Petition for Recusal both rested on Justice Larsen's signed verification, subject to the penalties of 18 Pa. C.S. § 4904, that the allegations in the petitions were "true and correct." Section 4904 is the Pennsylvania statute prohibiting unsworn falsification to authorities.[26] Attorneys practicing in Pennsylvania are familiar with the requirement that all allegations of fact in petitions filed

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25 Justice Larsen's motion for reconsideration was filed simultaneously with his petition for recusal. Both the Petition for Recusal and the motion for reconsideration were denied.

26 Pursuant to 18 Pa. C.S.A. § 4904, a person commits a misdemeanor of the second degree if he makes a false written statement which he does not believe to be true, with intent to mislead a public servant in performing his official function.

with the courts be verified under oath subject to 18 Pa. C.S. § 4904, and have a duty of candor toward the tribunal pursuant to Rule 3.3 of the Rules of Professional Conduct, as promulgated by the Pennsylvania Supreme Court.

The Subcommittee has carefully reviewed the grand jury testimony of Justice Larsen, members of Justice Larsen's staff, and others, to learn whether Justice Larsen would have, in fact, been able to "back up" his allegations of serious misconduct in the petition for recusal and the supplemental petition. Justice Larsen himself gave four full days of testimony in the grand jury, on April 19 and 20, 1993, July 19, 1993, and September 9, 1993. In that testimony, Justice Larsen made it clear that many of his allegations were not based on his personal knowledge, but on information from two sources -- statements allegedly made by an anonymous telephone caller at various times, and statements allegedly made by Justice Zappala in a one-on-one meeting between the two justices on October 13, 1992 (the "October 13, 1992 Meeting"), when Justice Zappala notified Justice Larsen that the Court was going to reprimand him in the JIRB Matter. Other individuals identified by Justice Larsen as having evidence or other information relevant to his allegations either testified before the grand jury or were interviewed by investigators.

The Subcommittee finds that Justice Larsen's alleged anonymous source provided an insufficient basis for the public allegations of serious misconduct in his Petitions for Recusal. In the grand jury, Justice Larsen was unable to identify or even speculate as to the identity of the source in any meaningful way. He was unable to produce any witness or physical evidence to corroborate the existence of the anonymous source. His claim that he destroyed anonymous notes evidencing misconduct by fellow justices is both incredible and

an admission that he breached his duty to report such misconduct to the JIRB. Furthermore, Justice Larsen has demonstrated a willingness to rely on anonymous or undisclosed sources in the past. In the JIRB Matter, for example, Justice Larsen testified that he had overheard complaints about Judge Ross in the steam room of a health club, and that the complaints (as opposed to the Jon Botula tip) were passed on to Judge Ross in the ex parte meeting that resulted in his reprimand. Justice Larsen himself acknowledged in his grand jury testimony that "it's questionable" to make accusations against others based solely on anonymous information.

Justice Larsen testified in the grand jury that his other primary information source, the October 13, 1992 meeting with Justice Zappala, lasted one-half hour and that Justice Zappala admitted to a variety of wrongful activities, including case-fixing, improper ex parte contacts with JIRB members, and organized crime associations. Justice Zappala denied making any of the admissions. Justice Zappala was aware of Justice Larsen's propensity for attacking those acting adversely to his interests, as manifested in Justice Larsen's petitions to disqualify nearly every member of the JIRB, and three members of the Supreme Court, during the JIRB Matter. In the grand jury, Justice Larsen failed to adequately explain why Justice Zappala would expose himself to such an attack by making the admissions attributed to him in the October 13, 1992 meeting.

Based on the evidence adduced by the grand jury and by the investigators assigned to the grand jury, the Subcommittee has concluded that Justice Larsen lacked a reasonable basis to believe the truth of many of his allegations when made, and that those

allegations were made in bad faith and with a reckless disregard for the truth. Several of Justice Larsen's reckless allegations are discussed below.[27]

1. Justice Larsen's Allegation that Justice Zappala Was Under Investigation, and that he Received Kickbacks for Directing Bond Work to His Brother's Underwriting Firm.

In his Petition for Recusal, Justice Larsen alleged that Justice Zappala had a "clandestine interest" in multiple "layered corporations" affiliated with his brother's bond underwriting firm. RRZ Public Markets, Inc. ("RRZ"). According to Justice Larsen, Justice Zappala allegedly received indirect "kickbacks" through these corporations in return for having arranged for RRZ to receive bond work from various local governments in the Commonwealth. Justice Larsen further alleged that Justice Zappala was being investigated by the JIRB and federal law enforcement officials concerning this alleged conduct.

In the grand jury, Justice Larsen admitted he had no personal knowledge regarding any of these allegations. Rather, he relied on a conversation he had with Ronald Schmeiser, formerly the Finance Director for the City of Pittsburgh. Schmeiser told Larsen in about May 1992 that criminal investigators from the Internal Revenue Service had questioned him about work Justice Zappala's sons did on City of Pittsburgh bond issues while employed by RRZ. According to Justice Larsen, the conversation "inferentially" supported his allegations. However, in the grand jury, Mr. Schmeiser testified that the IRS investigators never asked him about Justice Zappala's conduct, limiting their inquiry to

27 It should be noted, however, that the Subcommittee has identified additional reckless allegations in Justice Larsen's Petitions for Recusal which are not specified in this Report, but which further support the Subcommittee's conclusion that Justice Larsen abused the legal process in filing the petitions.

Justice Zappala's two sons, Gregory and Stephen, and the consulting firm they operated, G&G, Inc.

The only other support offered by Justice Larsen for his allegations that Justice Zappala was under federal investigation was alleged admissions made by Justice Zappala himself in the one-on-one meeting between the two on October 13, 1992. Justice Larsen contended that Justice Zappala admitted that he and his sons were being investigated by the "IRS criminal division" in that meeting. Justice Zappala denied making the admissions.

That federal authorities were investigating the possibility of kickbacks by RRZ and its affiliates, including the G&S subsidiary operated by Justice Zappala's sons, is not disputed. However, apart from admissions allegedly made in a private one-on-one meeting, admissions which Justice Zappala denies ever making, Justice Larsen failed to supply the grand jury with evidence that Justice Zappala himself, rather than other members of his family, was the target of criminal investigation. On the contrary, Thomas Corbett, Esquire, former United States Attorney for the Western District of Pennsylvania told investigators that there was no indication that Justice Zappala had received remuneration through RRZ or its affiliates, thus the investigation never proceeded in that direction.

Justice Larsen offered the grand jury no evidence at all that Justice Zappala had a pecuniary interest in any RRZ affiliate, or that he ever received kickbacks.

Justice Larsen's support for the allegation that Justice Zappala directed bond work to RRZ, was the appointment of James Dodaro, a former law partner of Justice Zappala, to the Pennsylvania Turnpike Commission in 1984. Justice Larsen relied on a "rumor" that he learned eight years after the fact that Justice Zappala had met in Harrisburg

in 1984 with various legislators and arranged to have his former law partner, James Dodaro, appointed to the Pennsylvania Turnpike Commission to ensure that RRZ would receive its share of turnpike bond work. Mr. Schmeiser testified that he had third-hand knowledge of such a meeting involving Justice Zappala, but the individuals who supposedly provided this information to Schmeiser denied any knowledge of it. On the other hand, Charles Zappala, Justice Zappala's brother, who is a principal in RRZ, freely admitted that he went to Harrisburg and actively participated in efforts to have Dodaro's appointment to the Turnpike Commission confirmed. Senator Vincent Fumo acknowledged the same. Thus Justice Larsen was unable to offer evidence of Justice Zappala's involvement in Dodaro's appointment.

Justice Larsen also claimed that an investigator he hired, Joseph Carduff, learned that Justice Zappala had contacted officials of a school district in Monroeville and influenced them to use RRZ as underwriter for a bond issue. However, the investigator himself denied in an interview that he ever had any evidence of involvement by Justice Zappala.

2. Justice Larsen's Allegations that Justice Zappala Met Ex Parte With Litigants in the Port Authority and PLRB Cases and Guided Those Matters Through the Supreme Court in a Special Manner.

In his Petition for Recusal, Justice Larsen alleges that Justice Zappala met ex parte with representatives of Allegheny County and the City of Pittsburgh and surreptitiously advised them of the "route" and procedures to use to file an injunction action against a transit union to enjoin a crippling strike in the case of Masloff v. Port Authority of Allegheny County, 531 Pa. 416, 613 A.2d 1186 (1992). Justice Larsen's allegation of an ex parte meeting was based solely on alleged admissions by Justice Zappala in the October 13, 1992

meeting. The admissions were denied by Justice Zappala. Additionally, attorneys for all parties in the Port Authority matter denied knowledge of any such ex parte meeting. In interviews, the City of Pittsburgh's attorneys insisted that Justice Zappala had no role in developing their strategy to file a "King's Bench" petition in the Supreme Court, which asked the court to exercise its plenary jurisdiction so that hearing of the matter could be expedited.

As for the allegation that Justice Zappala "guided" the Port Authority case through the Supreme Court in a special manner, Justice Larsen testified in the grand jury that Justice Zappala publicly advised the City of Pittsburgh of a jurisdictional defect in their filing (which the City later cured), that Justice Zappala imposed an expedited briefing schedule, that Justice Zappala ruled in favor of the City on a "standing" issue, that Justice Zappala sent the matter to Commonwealth Court for an injunction ruling, and that Justice Zappala wrote the majority opinion affirming Commonwealth Court's injunction, and expedited its filing. However, Justice Larsen offered no evidence that the actions of Justice Zappala in the Port Authority case were out of the ordinary for cases in which plenary jurisdiction is exercised. By definition, such cases involve "an issue of immediate public importance." 42 Pa. C.S. § 726. Moreover, the key decision in the matter, whether an injunction should issue, was made in the first instance by Judge Silvestri of Commonwealth Court. Justice Larsen also offered no evidence that Justice Zappala's actions in the Port Authority case were motivated, as he had alleged, by a desire to generate goodwill with local politicians and to rescue from risk bonds sold by RRZ for the City of Pittsburgh. On the contrary, the evidence is that RRZ did no bond work for the City or Allegheny County at any time near the strike or the filing of the Port Authority case.

Justice Larsen also alleged in his Petition for Recusal that Justice Zappala met ex parte with representatives of the City of Philadelphia and also surreptitiously advised them to file a "King's Bench" petition for plenary jurisdiction with the Pennsylvania Supreme Court in City of Philadelphia v. PLRB, 531 Pa. 489, 614 A.2d 213 (1992).[28] In the grand jury, Justice Larsen explained that Senator Vincent Fumo flew to Justice Zappala's house in Conneaut, Ohio, on behalf of the City, in an airplane leased by the City, to discuss the case pre-complaint. Again, Justice Larsen relied on the October 13, 1992 meeting with Justice Zappala as the source of his knowledge regarding the visit by Senator Fumo and the matters discussed. Justice Zappala denied any such discussions during the October 13, 1992 meeting. Justice Zappala and Senator Fumo acknowledged the visit, but stated that they discussed Justice Zappala's concerns regarding the recently adopted state budget, and not the PLRB case. Justice Larsen also testified that Philadelphia attorney James Schwartzman, Esquire, provided the same information to him on December 7, 1992 -- after his Petition for Recusal was filed. Mr. Schwartzman denied doing so. In the grand jury, Justice Larsen asserted that he knew about Senator Fumo's visit to Conneaut at the time he filed his Petition for Recusal,

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28 The PLRB case arose from a stalemate in the negotiations between the City of Philadelphia and municipal employee labor unions in 1992. At the time, the City was operating under a financial plan approved by the Pennsylvania Intergovernmental Cooperation Authority ("PICA"), which had issued bonds for the City to help it through a financial crisis. The City needed concessions in the labor negotiations in order to proceed with the PICA-approved financial plan. When negotiations reached an impasse, the Pennsylvania Labor Relations Board ("PLRB") appointed fact-finders, obligating the City to honor existing collective bargaining agreements pending the fact-finding process. Through the PLRB lawsuit, the City succeeded in overturning the PLRB's order appointing fact-finders.

but had difficulty explaining why he failed to make specific reference to that visit in his petition.

Justice Larsen also alleged that Justice Zappala took charge of the PLRB case and guided it through the Supreme Court in a special manner. Justice Larsen cited the fact that Justice Zappala had prepared and circulated a draft order granting hearing of the City of Philadelphia's petition, set a brisk briefing schedule, and later, on the merits of the matter, sent a letter to Chief Justice Nix prompting assignment of the case for disposition. Again, Justice Larsen offered no evidence that these actions were covert, extraordinary in the circumstances, or dispositive of the outcome of the matter. Further, no evidence of a financial interest in the outcome of the lawsuit on the part of Justice Zappala was shown by Justice Larsen.

3. Justice Larsen's Allegation that Attorney John Doherty Attempted to Suborn Perjury by Nikolai Zdrale, and Was Rewarded by Justices Zappala and Cappy for Doing so by Appointment to the Position of Chief Disciplinary Counsel.

In 1986, Nikolai Zdrale sold a 34.86-acre parcel of land in Fairfield Township, Pennsylvania to Justice Larsen for $5,000. Mr. Zdrale, who was later convicted for attempted murder but eventually had his conviction reversed by the Supreme Court, testified in the JIRB Matter that the sale was a legitimate arms-length transaction. In 1989, Mr. Zdrale hired John Doherty, Esquire, a prominent criminal defense attorney and former President of the Pittsburgh Bar Association, to handle the Superior Court appeal of his conviction. In his Petition for Recusal, Justice Larsen alleged that Mr. Doherty "attempted to suborn perjury by bribing Nikolai Zdrale with the offer of free legal advice and services if he (Zdrale) would recant his truthful testimony and lie about [Justice Larsen]."

Justice Larsen testified in the grand jury that this allegation was based entirely upon his interpretation of a transcript he received of an interview that Zdrale provided to S. Michael Streib, Esquire, Justice Larsen's former law clerk. Mr. Streib was hired by Mr. Zdrale a few weeks after the meeting between Zdrale and Doherty in which Doherty allegedly suborned perjury. However, under no reasonable interpretation can the Streib transcript be construed as containing evidence that Zdrale was bribed with free legal advice and services in exchange for testimony adverse to Justice Larsen. Moreover, evidence adduced in the grand jury strongly suggests that Streib took Zdrale's statement for the sole purpose of assisting Justice Larsen with a motion he was filing in the JIRB Matter, which was pending at the time. Finally, Streib himself and another witness friendly to Justice Larsen who spoke to Zdrale denied that Zdrale told them anything about a bribe by Mr. Doherty.

As for his allegation that Justices Zappala and Cappy rewarded Mr. Doherty for attempting to suborn perjury, by engineering his appointment as Chief Counsel for the Disciplinary Board of the Supreme Court of Pennsylvania, Justice Larsen was unable to provide the grand jury with any evidence that Justice Zappala was ever aware of the matters discussed in the Streib transcribed statement, or otherwise linking Justice Zappala's support of Doherty's appointment to any efforts by Doherty to suborn perjury.

4. Justice Larsen's Allegation that Justice Cappy Deliberately Engineered the Reconsideration of Zdrale's "Out-of-Time" Petition in the Appeal of his Conviction for Attempted Murder to the Supreme Court.

In his Petition for Recusal, Justice Larsen alleged that Justice Cappy engineered the reconsideration of Zdrale's untimely petition for allowance of appeal in his

attempted murder case, in exchange for Zdrale's perjured statement to Deputy Attorney General Lawrence Claus,[29] all as part of an agreement with an individual named Elias J. ("Junior") Hakim. In his grand jury testimony, Justice Larsen confirmed that the allegations in his Petition were intended to convey that Justice Cappy had acted deliberately and intentionally.

Mr. Zdrale did, in fact, file an untimely petition for reconsideration of the denial of his petition for allowance of appeal which was assigned to Justice Cappy in March 1991. On Justice Cappy's recommendation, the petition was granted. Justice Larsen conceded in the grand jury, however, that he had no evidence that Justice Cappy's acceptance of the out-of-time petition was done knowingly or deliberately. On the contrary, Justice Cappy acknowledged his error in a letter to his fellow Justices in August 1991, and recommended that the appeal be dismissed as improvidently granted. The evidence indicates that Justice Larsen had access to this letter and other relevant court records at the time he made his accusations of deliberate misconduct against Justice Cappy.

As for his allegation that Justice Cappy agreed with Junior Hakim that he would obtain a reversal of Zdrale's conviction, Justice Larsen relied solely on information that he allegedly obtained through an anonymous source. Justice Cappy and Mr. Hakim, however, denied any such agreement, and denied ever even discussing Mr. Zdrale with each other.

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29 Justice Larsen alleged that, in an interview on October 12, 1990, Mr. Zdrale made statements to Mr. Claus which directly contradicted his sworn testimony given in the JIRB Matter regarding the Fairfield Township land transaction.

5. Justice Larsen's Allegation that Justice Zappala Commandeered a Vehicle and Attempted to Run him Down.

In a Supplemental Petition for Recusal in the JIRB Matter filed on December 15, 1992, Justice Larsen alleged that, on December 7, 1992, Justice Zappala commandeered a vehicle and tried to run him down in the driveway of the Four Seasons Hotel in Philadelphia. There were four witnesses to the occurrence: Ronald Persia, the doorman at the hotel; Justice Zappala; Senator Vincent Fumo, the driver of the car which allegedly was commandeered by Justice Zappala; and James Schwartzman, Esquire, the driver of the car Justice Larsen was exiting when the incident occurred. Justice Larsen alleged that Senator Fumo's vehicle was being operated at "an excessively high rate of speed" and was driven perilously close to Justice Larsen.

During the week of December 7, 1992, Justice Larsen was in Philadelphia for a session of the Supreme Court and stayed at the Four Seasons Hotel. On the night of December 7, 1992, Justice Larsen had dinner with a Philadelphia attorney, James Schwartzman. After dinner, Mr. Schwartzman drove Justice Larsen to the Four Seasons Hotel and parked in the driveway at the portico of the hotel. Justice Larsen exited the vehicle and started to cross the driveway. At that moment, a hotel doorman, Ronald Persia, called out a warning to Justice Larsen so that Justice Larsen would take notice of a car which was travelling through the driveway. Justice Larsen stepped back toward Mr. Schwartzman's car. After the vehicle passed, Justice Larsen thanked Mr. Persia for the warning and went to his room.

Justice Zappala was also staying at the Four Seasons Hotel while the Court was in session. After Justice Zappala had dinner with Senator Vincent Fumo and others, Senator

Fumo drove Justice Zappala back to the hotel and arrived as Justice Larsen was exiting Mr. Schwartzman's car. Justice Zappala asked Senator Fumo to drive through the portico so he would not have to enter the hotel with Justice Larsen. Senator Fumo proceeded through the portico, driving past Justice Larsen, and returned later to drop off Justice Zappala.

Justice Larsen testified that his allegation that someone intended to harm him was based on his interpretation of the incident as he personally observed it. Other observers, however, saw the incident quite differently. Mr. Persia stated that, although the car driven by Senator Fumo passed through the driveway at a speed faster than normal, he had seen taxis drive through at similar speeds. Mr. Schwartzman judged the vehicle's speed as "a little faster than normal." Mr. Persia stated that Senator Fumo's car drove within three to four feet of Justice Larsen, causing Mr. Persia to call out a warning, but that it did not appear that the car was attempting to hit Justice Larsen or that Justice Larsen became agitated or excited immediately following the incident. Mr. Persia did not believe the incident warranted a report to either hotel security or to the local police. Although Mr. Schwartzman spoke with Justice Larsen later that evening, Justice Larsen did not mention the incident. Senator Fumo and Justice Zappala denied that they intended to run down or physically injure Justice Larsen or to send him any message.

In the grand jury, Justice Larsen was asked to support his allegation that Justice Zappala "commandeered" the vehicle for the purpose of harming Justice Larsen. Justice Larsen responded that this allegation was based on information later brought to Justice Larsen's attention that Justice Zappala had directed Senator Fumo to drive around the block

so an encounter with Justice Larsen could be avoided. This, of course, does not equate to a direction to Senator Fumo to run Justice Larsen down.

The Subcommittee concludes that Justice Larsen's grand jury testimony and the other evidence presented by Justice Larsen failed to establish that Justice Larsen had a reasonable basis for making the allegations regarding the Four Seasons incident in his Supplemental Recusal Petition. Specifically, the Subcommittee finds that there is no substantial evidence (1) that Senator Fumo was trying to run Justice Larsen down when he drove through the hotel driveway; (2) that Justice Zappala intended to cause Justice Larsen physical injury; or (3) that Justice Zappala directed Senator Fumo to try to harm Justice Larsen or to send him a message.

E. Justice Larsen Used his Authority and Prominence as a Supreme Court Justice to Induce Court Employees to Participate in an Unlawful Conspiracy to Obtain Prescription Drugs by Fraudulent Means.

Over the past ten years, Justice Larsen regularly obtained certain psychotropic (anti-anxiety and anti-depressant) drugs for his own use by having one of his physicians, Dr. Earl Humphreys, issue prescriptions for the drugs in the names of members of Justice Larsen's staff. The drugs included valium, diazepam, ativan and serax, all Schedule IV controlled substances under the Controlled Substances, Drug, Device, and Cosmetics Act. Justice Larsen's staff members were told to pick up the drugs at a pharmacy, then give the drugs to Justice Larsen. Payment for the drugs would be made under the staff members' taxpayer-funded state employee benefit plan. On October 29, 1993, charges of criminal conspiracy and violations of the Controlled Substances Act were brought against Justice Larsen in the Allegheny County Court of Common Pleas. On April 9, 1994, a twelve-

member jury found Justice Larsen guilty beyond a reasonable doubt on two counts of criminal conspiracy to violate the Act.

The conduct of Dr. Humphreys and the other participants in the prescription drug scheme subjected them to potential felony prosecution under the Controlled Substances Act. Specifically, 35 P.S. § 780-113(a)(12) prohibits "[t]he acquisition or obtaining of possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge."[30]

In his grand jury testimony, Justice Larsen did not dispute that he used his staff to obtain the prescribed drugs but contended that neither he, nor his staff, nor Dr. Humphreys committed any crimes in doing so. However, Justice Larsen insisted that members of Justice Larsen's staff and Dr. Humphreys be granted immunity from any state criminal prosecution prior to Justice Larsen's testimony before the grand jury on this issue. Nevertheless, Dr. Humphreys is currently the subject of inquiries instituted by the Drug Enforcement Administration and the Pennsylvania Bureau of Professional and Occupational Affairs.

The testimony of Dr. Humphreys and the members of Justice Larsen's staff establish that Justice Larsen used his position as a Supreme Court justice to influence them to participate in his arrangement to obtain prescription drugs by fraudulent means in an effort to conceal his drug use from public view.

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30 Justice Larsen also used his staff to obtain non-scheduled prescription drugs, such as Prozac, in the same manner. This conduct constituted a potential misdemeanor violation of the Pharmacy Act, 63 P.S. § 390-8(13).

Justice Larsen has known Dr. Humphreys since 1960. While a practicing attorney, Justice Larsen represented Dr. Humphreys in a variety of matters including providing counsel at annual corporate meetings and handling Dr. Humphreys' divorce. He performed Dr. Humphreys' second marriage. Dr. Humphreys testified that he considered himself a "close friend" of Justice Larsen's, and that he felt it was an honor to have a Supreme Court justice as a patient. He never charged Justice Larsen for his services.

During the criminal trial, Dr. Humphreys testified that prescribing drugs in the names of other persons was "Justice Larsen's idea." Justice Larsen would call Dr. Humphreys by telephone once or twice a month. Justice Larsen would tell him when and to whom a prescription should be issued. Thus, in contrast to the standard practice of conducting a thorough physical examination prior to prescribing medication initially, and regular examinations thereafter, Dr. Humphreys allowed Justice Larsen to dictate his own prescription drug needs.

During the period in which Dr. Humphreys prescribed the Schedule IV psychotropic medications, Justice Larsen was being treated by other physicians and psychiatrists. Dr. Humphreys testified that he never conferred with these physicians or psychiatrists. Justice Larsen's former psychiatrist, Dr. Friday, testified that he was unaware that Dr. Humphreys had prescribed psychotropic medication during the period Dr. Friday treated Justice Larsen. Similarly, Justice Larsen's current psychiatrist testified that he was unaware that Dr. Humphreys had been prescribing psychotropic drugs.

Justice Larsen made use of the loyalty Dr. Humphreys felt toward him, and of Dr. Humphreys' docile and acquiescent nature. Although Dr. Humphreys recognized that his

conduct could subject him to criminal liability,[31] he testified that his acquiescence in the arrangement stemmed from Justice Larsen's requests for privacy. Dr. Humphreys explained that he continued, even though he was uncomfortable with the arrangement, because he believed "nobody else would give [Justice Larsen] that kind of privacy."

The staff members who participated in the scheme were Janice Uhler, Jamie Lenzi, Barbara Roberts, and Vera Freshwater. Ms. Uhler testified at Justice Larsen's preliminary hearing that she considered herself a friend of Justice Larsen. She testified that she knew the prescription scheme was wrong but that she participated nonetheless because "he was my employer." Ms. Uhler described Justice Larsen's instructions to pick up prescriptions made out in her name as "matter of factly being directed by Justice Larsen to get the prescriptions."

Barbara Roberts worked for Justice Larsen as a secretary from March 1980 to March 1990. At the criminal trial, Ms. Roberts testified that her involvement in the scheme originated with a "directive" to pick up a prescription that would be in her name. She testified that she was uncomfortable with the arrangement and that she did it because she was asked by Justice Larsen. She testified that she "didn't think [she] had a choice. He was the boss." Her involvement in the scheme ended when a pharmacist noted that she was receiving a drug which may not have been proper for a pregnant woman. Asked why she did not explain that the prescription was not for her, she stated, "I would have gotten Justice Larsen

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31 Dr. Humphreys never prescribed drugs in the manner in which he prescribed medication to Justice Larsen for any of the over ten thousand patients he has treated during his career.

or myself in trouble." Justice Larsen testified that Barbara Roberts first suggested the arrangement. Ms. Roberts, however, denied that the scheme was her idea.

Jamie Lenzi worked for Justice Larsen as a law clerk from 1987 until his suspension in October 1993. Ms. Lenzi testified at the preliminary hearing that she participated in the scheme as a favor to Justice Larsen. Although she believed the scheme was necessary to maintain Justice Larsen's privacy, she conceded that she would not have agreed to participate for just any friend, as they would not have the same publicity concerns as a Supreme Court justice.

Vera Freshwater was a secretary to Justice Larsen until his suspension. Ms. Freshwater characterized Justice Larsen's request that she allow prescriptions be written in her name as a "polite request." Ms. Freshwater did not believe her job would be jeopardized if she refused.

Justice Larsen testified in the criminal trial that his court employees were not coerced, but voluntarily participated in the prescription drug scheme. He reasoned that they could have refused his requests, but never did. Nor did anyone ever tell Justice Larsen that they were uneasy with the arrangement.

Based on the evidence adduced in the grand jury investigation and the criminal trial, the Subcommittee finds that Justice Larsen misused the prominence and authority of his position as a Supreme Court Justice to influence court employees and his physician to participate in an unlawful conspiracy to conceal his prescription drug use, exposing them to potential prosecution under Pennsylvania's criminal laws and other serious consequences.

F. Justice Larsen Has Violated the Laws of the Commonwealth and Canons of Judicial Ethics, in Contravention of the Constitution that He Took a Solemn Oath to Obey.

The cumulative effect of Justice Larsen's misbehavior gives rise to an independent ground for concluding that he has engaged in misbehavior in office, warranting impeachment.

In his oath of office, Justice Larsen solemnly swore to "support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth," and to "discharge the duties of [his] office with fidelity." Pa. Const. Art VI, §3. Included in the Constitution of the Commonwealth that Justice Larsen swore to obey and defend is Article V, Section 17, which provides in relevant part that "Justices and judges shall not engage in any activity prohibited by law and shall not violate any canon of legal or judicial ethics." Pa. Const. Art. V, §17(b).

By making false statements under oath to a grand jury and directing an illegal conspiracy, Justice Larsen has engaged in activity prohibited by law. Justice Larsen has also violated the first two Canons of the Code of Judicial Conduct.

Canon 1 of the Pennsylvania Code of Judicial Conduct declares that "A Judge Should Uphold the Integrity and Independence of the Judiciary." "A judge," it continues, "should himself observe high standards of conduct so that the integrity and independence of the judiciary may be preserved." As reflected in this Report, Justice Larsen afforded special handling to cases involving attorney friends, corrupting the allocatur process by which litigants gain access to the Supreme Court, and then made false statements under oath about having done so; he initiated an improper ex parte contact with a Court of Common Pleas

judge; he filed petitions for recusal against two of his fellow justices which included unfounded accusations of criminal and other misconduct; and he persuaded his staff to join him in an illegal conspiracy to obtain prescription drugs. There can be no doubt that the combined effect of this misconduct is to undermine the integrity of the state judiciary.

Canon 2 states that "A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities," and includes the admonition that:

> A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others.

In maintaining a special list of allocatur petitions for the benefit of his friends and political contributors, Justice Larsen clearly allowed social or other relationships to influence his judicial conduct, in violation of this canon.

The evidence detailed throughout this Report supports the conclusion that Justice Larsen violated the laws of the Commonwealth and the canons of judicial ethics in contravention of Article V, Section 17 of the Constitution, which in turn violated Justice Larsen's oath of office. The cumulative effect of the evidence of Justice Larsen's misconduct constitutes an independent basis for concluding that Justice Larsen has engaged in misbehavior in office.[32]

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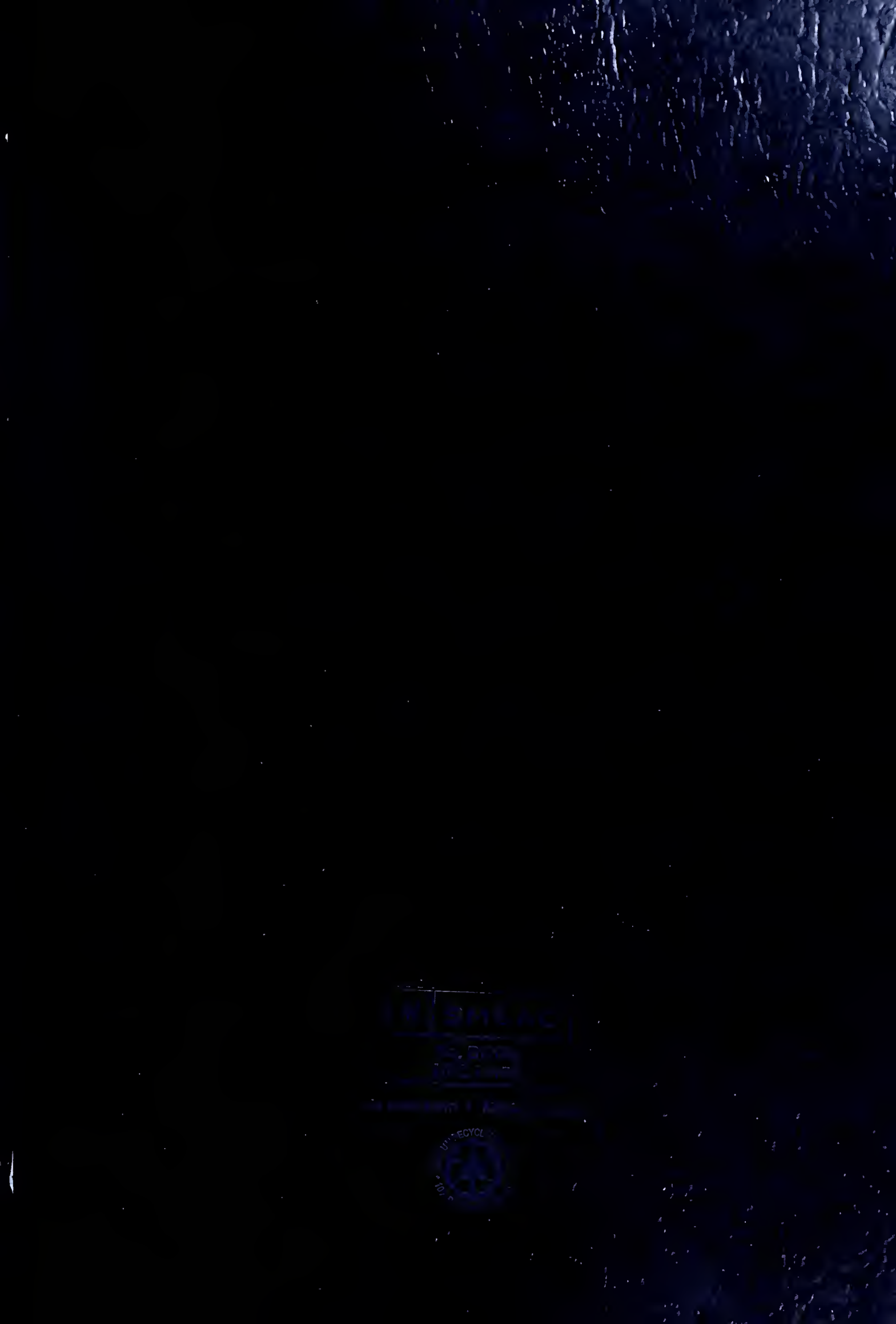
32 In the federal system, articles of impeachment have not been limited to isolated charges of misconduct, but have included articles based upon the cumulative effect of a judge's conduct and the adverse effect of such conduct on the integrity of the judiciary. Indeed, the convictions of Judges Halsted Ritter and Harry Claiborne were based on such articles. See Warren Grimes, "The Role of the United States House of Representatives in Proceedings To Impeach and Remove Federal Judges," in 1 Research Papers of the National Commission on Judicial Discipline and Removal 39, 59 (1993).

VI. CONCLUSION

The Subcommittee on Courts has undertaken a comprehensive, independent investigation into the conduct of Justice Rolf Larsen to determine whether he is liable to impeachment. The allegations of misconduct outlined in this Report are supported by substantial evidence and, in the Subcommittee's view, constitute "misbehavior in office" warranting impeachment.



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